

TITLE 43

MILITARY AFFAIRS

PART I. Department of Military Affairs

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PART I. DEPARTMENT OF MILITARY AFFAIRS

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CHAPTER 1. GENERAL PROVISIONS

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Authority

The provisions of this Chapter 1 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186), unless otherwise noted.

Source

The provisions of this Chapter 1 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294, unless otherwise noted.

Subchapter A. DISCLOSURE, ACCESS AND RELEASE OF NATIONAL GUARD PERSONNEL RECORDS, PAPERS AND DOCUMENTS

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§ 1.1. General.

Section 702(3) of 51 Pa.C.S. (relating to duties of department) provides that the Department will be the office of permanent record for personnel papers, documents and forms pertaining to the Pennsylvania National Guard and the Pennsylvania Guard except where the laws of the United States require certain papers, documents or forms to be kept permanently in the National Guard Bureau or other Federal agency. Section 902(2) of 51 Pa.C.S. (relating to general powers and duties of Adjutant General) provides that the Adjutant General will be responsible for maintaining military records until transferred to the Pennsylvania archives or, where appropriate, to the proper Federal agency. In fulfilling these duties and responsibilities, the Department and the Adjutant General collect and maintain many military personnel and medical records that were initially prepared and maintained under applicable Federal directives. This subchapter sets forth the standards for public release of those records.

Source

The provisions of this § 1.1 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294.

§ 1.2. Policy.

(a) The public release or disclosure of military personnel or medical records maintained by the Department or information contained in the records, except for the purposes set forth in subsection (b) and for the information declared to be public information in § 1.3 (relating to releasable records and information) constitutes an unwarranted invasion of the personal privacy of the individuals to whom the records pertain and is prohibited.

(b) The records or information will be released to the following persons or under the following circumstances:

(1) Upon request or with the written consent of the individual to whom the records or information pertain or that individual's attorney-in-fact or agent acting upon proper authorization.

(2) If the individual to whom the records or information pertain to is dead or declared incompetent, to that individual's next-of-kin, executor or personal representative, or guardian or conservator.

(3) Upon receipt of a valid order or subpoena issued by a court of competent jurisdiction.

(4) For any routine uses and other official purposes to carry out the mission and perform the functions of the Department and the Pennsylvania National Guard.

(5) For the law enforcement purposes, if requested by a Federal, State or local law enforcement agency to be used in an investigation.

(6) To a person under compelling circumstances affecting the health or safety of the individual to whom the records or information pertain or to facilitate the identification or remains of individuals where the person requesting

access has reasonable cause to believe the remains of the individual to whom the records pertain may require identification.

(7) For use by taxing authorities, but only the home address and social security number, in addition to the information releasable under § 1.3 (relating to releasable records and information), may be disclosed for this purpose.

Source

The provisions of this § 1.2 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294.

Cross References

This section cited in 43 Pa. Code § 1.3 (relating to releasable records and information); and 43 Pa. Code § 1.5 (relating to procedures).

§ 1.3. Releasable records and information.

Notwithstanding § 1.2 (relating to policy), the following records and information from the records maintained by the Department and the Adjutant General are considered public information and may be released or disclosed to the public without constituting an unwarranted invasion of the personal privacy of the individual to whom the record pertains:

- (1) Name.
- (2) Rank.
- (3) Date of rank and entry into military service.
- (4) Gross pay or salary.
- (5) Military assignments or duty titles.
- (6) Office addresses.
- (7) Source of commission, if applicable.
- (8) Sex.
- (9) Date of birth.
- (10) Other information as is claimed to be public information and is determined by the Office of the Attorney General to be public information under Commonwealth law.

Source

The provisions of this § 1.3 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294.

Cross References

This section cited in 43 Pa. Code § 1.2 (relating to policy); and 43 Pa. Code § 1.5 (relating to procedures).

§ 1.4. Records affected by Federal Privacy Act.

The public release or disclosure of records under the control of the Department or the Adjutant General that were collected or maintained in a system of records under 5 U.S.C. § 552a (relating to records maintained on individuals) shall be governed by the substantive standards set forth in that law or the standards set

forth in this subchapter, whichever are more restrictive. Nothing in this subchapter shall be construed to require the Department or the Adjutant General to comply with the procedures applicable to the maintenance of systems of records under 5 U.S.C. § 552a.

Source

The provisions of this § 1.4 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294.

Cross References

This section cited in 43 Pa. Code 1.5 (relating to procedures).

§ 1.5. Procedures.

(a) Requests for release or disclosure of personnel or medical records or information maintained by the Department and the Adjutant General shall be in writing, specifying the information requested and, except for information releasable under § 1.3 (relating to releasable records and information), the purpose for which it is requested; provided, however, that the use of information and records under § 1.2(b)(4)—(6) (relating to policy) does not require a written request, and, where the individual to whom the records or information pertain presents himself at the office maintaining the records, the individual will be granted reasonable access, consistent with efficient operations and the mission of the Department. Requests for release of records and information should be addressed to the Adjutant General, Department of Military Affairs, Fort Indiantown Gap, Annville, Pennsylvania 17003-5002.

(b) The Adjutant General or his designee will review all requests and act within 15 days to approve or disapprove the disclosure or release of information or records. If the disclosure or release is approved, the individual requesting access may review the requested information or records at the office where they are maintained. Nothing in this subchapter shall be construed to require the Adjutant General or the Department to provide copies of records or information to any person; except that individuals may copy public information under § 1.3. If a photocopier or reproduction device under the control or operation of the Department is used to copy the information, the requester may be charged 25¢ per page for the copies.

Source

The provisions of this § 1.5 adopted April 11, 1979, effective April 12, 1979, 9 Pa.B. 1294.

**Subchapter B. SAFEGUARDING PERSONAL INFORMATION
OBTAINED IN THE ADMINISTRATION OF VETERANS' PROGRAMS**

- Sec.
1.11. Definitions.
1.12. Policy.
1.13. Public information.
1.14. Use and release of personal information.
1.15. Procedures.

§ 1.11. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adjutant General—The chief administrative and executive officer and head of the Department.

Advisory Council—A veterans' home advisory council.

Bureau—The Bureau for Veterans' Affairs of the Department.

Commission—The State Veterans' Commission.

Department—The Department of Military Affairs of the Commonwealth.

Director—The Director of the Bureau for Veterans' Affairs.

Division—The Veterans' Home Division within the Bureau.

Information—A record, item, document, collection or grouping of data about an individual maintained by the Bureau or the Division in connection with its administration of its veterans' programs.

Participant—An individual who applies for or participates in any veterans' programs.

Personal information—Information, other than public information, that identifies a participant by name or other recognizable identifier such as a social security number.

Veterans' programs—Any program administered by the Bureau or the Division for the benefit of veterans including the Pennsylvania Soldiers' and Sailors' Home, the Hollidaysburg Veterans' Home and such other veterans' homes as may be established in this section; the Blind Veterans' Pension established by 51 Pa.C.S. § 7701; the Veterans' Emergency Assistance and Educational Gratuity programs established by section 1411 of The Administrative Code of 1929 (71 P. S. § 391); the Real Property Tax Exemption for Certain Disabled Veterans' Program, established by the act of June 21, 1963 (P. L. 174, No. 104) (72 P. S. §§ 4691—4694); the Vietnam Veterans' Compensation and Prisoner of War Compensation Programs established by the Vietnam Conflict Veterans' Compensation Act (51 P. S. §§ 20121—20134) and the Vietnam Conflict Prisoners of War Compensation Act (51 P. S. §§ 20151—20163) and such other programs for which the Bureau may now or hereafter collect or maintain information.

Source

The provisions of this § 1.11 adopted March 13, 1981, effective March 14, 1981, 11 Pa.B. 981.

§ 1.12. Policy.

Personal information relating to participants in veterans' programs shall be safeguarded and shall not be subject to public release except as provided in this chapter. Information that does not identify a particular participant or participants need not be safeguarded.

Source

The provisions of this § 1.12 adopted March 13, 1981, effective March 14, 1981, 11 Pa.B. 981.

§ 1.13. Public information.

(a) Upon request, the Bureau will provide the following information (considered to be public information) about any named participant in a veterans' program about whom a specific inquiry is made:

- (1) Name of veterans' program in which the participant is participating or has applied for participation.
- (2) Dates of application and participation.
- (3) Disposition of application and dates of disposition.
- (4) Amounts of assistance or gratuity provided.
- (5) City, county and state, but not street or box number, of the residence of the participant.

(b) To protect the names of participants in veterans' programs from publication, the Bureau shall not release lists of names of participants except as provided in subsection (c) and § 1.14 (relating to use and release of personal information).

(c) Information contained in participants' records that is determined by the Attorney General, the General Counsel or other authorized Commonwealth attorney or a court of competent jurisdiction to be public information under the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§ 66.1—66.4) shall be released upon request to any member of the public without regard for the reasons for such request.

Source

The provisions of this § 1.13 adopted March 13, 1981, effective March 14, 1981, 11 Pa.B. 981.

§ 1.14. Use and release of personal information.

Personal information about participants in veterans' programs may be used and released under the following conditions and for the following purposes:

- (1) To the participant or person designated by the participant, upon request or with the written consent of the participant, or his authorized agent or attorney in fact, to whom the information pertains.

(2) If the participant is dead or incompetent, upon request or with the consent of such participant's next of kin, executor, personal representative, guardian or conservator.

(3) Upon receipt of a valid order or subpoena issued by a court of competent jurisdiction or an administrative agency.

(4) For any official purposes and all routine uses by the Department, the Bureau, the Division, the Commission or the Advisory Councils in processing applications, assessing eligibility, and managing the veterans' programs, including discussions and dispositions at public meetings of the Commission and Advisory Councils.

(5) For providing information to the United States Department of Veterans' Affairs, other agencies of the United States and the Commonwealth, political subdivisions, local taxing authorities and board of assistance, and any other governmental entities for purposes of administering the veterans' program; verifying information, or assisting other governmental entities for use in administering programs under their jurisdiction.

(6) For law enforcement purposes, if requested by any Federal, Commonwealth, or local law enforcement agency for use in an investigation.

(7) To any person under compelling circumstances affecting the health or safety of the participant to whom the personal information pertains or to facilitate the identification of remains of individuals where the person requesting personal information has reasonable grounds to believe the remains may be those of a participant.

(8) To provide any service to the participant or to answer inquiries on the behalf of the participant where the Bureau has reasonable grounds for concluding that the participant has asked the inquirer to act on his behalf.

(9) For use by any committee or legislative body of the United States, the Commonwealth, or local governments, provided that such information is not used for commercial or political purposes and excluding any medical records and information that would be considered privileged to confidential under 42 Pa.C.S. §§ 5901—5948 (relating to witnesses generally) or under the common law of this Commonwealth.

Source

The provisions of this § 1.14 adopted March 13, 1981, effective March 14, 1981, 11 Pa.B. 981.

Cross References

This section cited in 43 Pa. Code § 1.13 (relating to public information).

§ 1.15. Procedures.

(a) Requests for release of information about participants in veterans' programs other than the veterans' homes shall be submitted in writing to the Director, Bureau for Veterans' Affairs, Fort Indiantown Gap, Annville, Pennsylvania 17003-5002.

(b) Requests for release of information about participants in the veterans' homes program shall be submitted in writing to the Commandant of the veterans' home at which the participant resides.

(c) If a photocopier or reproduction device under the control of the Department or the Bureau is used to copy information released under this subchapter, the requester shall be charged 25¢ per page for such copies, unless the collection of such charge is waived for good cause or in the public interest. When the total copying charge is \$3.00 or less, collection will normally be waived. Copying charges are payable in advance by check or money order made payable to "Commonwealth of Pennsylvania."

(d) Any requester of information who believes his request has been improperly or incorrectly denied may appeal the denial by writing to the Adjutant General, who shall submit the letter for a legal review by an authorized agency or Commonwealth attorney, and render a decision, which decision shall be considered the final agency action with regard to the request for release of information.

Source

The provisions of this § 1.15 adopted March 13, 1981, effective March 14, 1981, 11 Pa.B. 981.

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